

STANDARD MODIFICATIONS TO AIA A101-1997

1 STANDARD MODIFICATIONS TO AIA A101-1997

- 1.1 These Standard Modifications amend or supplement the *Standard Form of Agreement Between Owner and Contractor* (AIA Document A101-1997) and other provisions of Bidding and Contract Documents as indicated below.
- 1.2 Compliance with these Standard Modifications is required by the Office of State Engineer (OSE) for all projects when competitive sealed bidding is used as the method of procurement.
- 1.3 All provisions of A101-1997, which are not so amended or supplemented, remain in full force and effect.
- 1.4 These Standard Modifications shall be attached to the AIA A101-1997 upon execution of the Agreement. Refer to the OSE Document *Instructions for Completion of Standard Form of Agreement Between Owner and Contractor* (AIA Document A101-1997) for additional guidance on the proper completion of the A101.

2 RELATED DOCUMENTS

- 2.1 AIA Document A101-1997 hereby incorporated by reference and referred to hereafter as A101.
- 2.2 AIA Document A201-1997 hereby incorporated by reference and referred to hereafter as A201.
- 2.3 Document 00811-OSE, Standard Supplementary Conditions, 07/01 Edition.
- 2.4 Other documents that may be identified in the Bidding and Contract Documents.

3 MODIFICATIONS TO A101

- 3.1 *Delete the first sentence of Article 1 and substitute the following:* The Contract Documents consist of this Agreement, 00501-OSE, Conditions of the Contract for Construction (General, Supplementary and other Conditions), Drawings, Specifications, Addenda issued prior to the execution of this Agreement, other documents listed in Article 8 of this Agreement and Modifications issued after executions of this Agreement; these form the Contract, and are as fully a part of the Contract as if attached to this Agreement or repeated herein.
- 3.2 *Delete Article 2 and insert the following:* The Contractor shall fully execute the Work described in the Contract Documents or reasonably inferable by the Contractor as necessary to produce the results indicated by the Contract Documents, except to the extent specifically indicated in the Contract Documents to be the responsibility of others.
- 3.3 *Delete Paragraph 3.1 and substitute the following:* The date of commencement of the Work shall be established in the SE-390, "Notice to Proceed." The Notice to Proceed will be issued to the Contractor in writing, no less than seven (7) days prior to the Date of Commencement. Nothing in this provision precludes the contractor from commencing work immediately after receipt of the Notice to Proceed.
- 3.4 *Add the following new Paragraphs 3.4 and 3.5 to the end of Article 3:*
 - 3.4 The Contractor acknowledges and recognizes that the Agency is entitled to full and beneficial occupancy and use of the completed Work following expiration of the Contract Time. It is hereby mutually agreed by and between the parties that time shall be an essential part of the Agreement and the Contractor further acknowledges and agrees that if the Contractor fails to complete substantially or cause the Final Completion of any portion of the Work within the Contract Time, the Agency will sustain damages and loss as a result of such failure. The exact amount of such damages will be difficult to ascertain. Therefore, the Agency and the Contractor agree as set forth below in this Paragraph 3.4.
 - 3.4.1 If the Contractor fails to achieve Substantial Completion of the Work within the Time for Completion allowed in the Agreement, the Agency shall be entitled to retain or recover from the Contractor and its Surety, as Step One liquidated damages and not as a penalty, the following per diem amounts commencing upon the first day following expiration of the specified or adjusted time of performance and continuing until the actual

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Date of Substantial Completion. Such liquidated damages are hereby agreed to be a reasonable estimate of damages the Agency will incur as a result of delayed completion of the Work: *(Insert a breakdown of per diem amounts shown on the SE-330.)*

3.4.2 If Final Completion of the Work is not achieved within the time allowed in the SE-330 for work after Substantial Completion, and if the Agency and OSE have not granted any extension of time, the Contractor shall owe to the Agency, not as a penalty but as Step Two liquidated damages, the sum stated below as Step Two liquidated damages for each and every partial or total calendar day of delay in Final Completion: *(Insert a breakdown of per diem amounts shown on the SE-330.)*

3.4.3 The Agency may deduct liquidated damages described in Subparagraphs 3.4.1 and 3.4.2 from any unpaid amounts then or thereafter due the Contractor under this Agreement. Any liquidated damages not so deducted from any unpaid amounts due the Contractor shall be payable to the Agency by the Contractor or its Surety at the demand of the Agency.

3.5 The Contractor shall be entitled to an Early Completion Award in the amount of _____ per day if the Contractor achieves Substantial Completion of the entire Work before the original Time for Completion; provided, however, that the Award shall not be payable until the time of final payment. If the Contractor has earned an Award with respect to the Work, the Agency shall have the right, at the Agency's election, to deduct from the Award any amounts due from the Contractor to the Agency. The Contractor shall include a provision in each of its subcontracts in excess of _____ ("Major Subcontracts") that requires the Contractor to pay such Major Subcontractor a share of any Award that bears the same ratio to the total Award as the amount of the Major Subcontract bears to the Contract Sum. In no event shall the Contractor be awarded any portion of the Award if the entire Work is not Substantially Complete on or before expiration of the original Contract Time for Substantial Completion. *(Insert the amount of any Early Completion Award per diem as shown on the SE-330 and the minimum dollar value for any Subcontractor to be eligible for a pro rata share of the Award.)*

3.5 *Add the following to Paragraph 4.3:*

4.3.1 Unit prices are set forth in the "Schedule of Unit Prices" attached hereto and made a part hereof as Exhibit (____). Such unit prices are considered complete and include: (1) all materials, equipment, labor, delivery, installation, overhead, and profit; and, (2) any other costs or expenses in connection with, or incidental to, the performance of that portion of the Work to which such unit prices apply.

3.6 *Delete Subparagraph 5.1.1 and substitute the following:*

5.1.1 Based on Applications for Payment, including all supporting documentation, submitted to the Agency and the A/E by the Contractor and Certifications for Payment issued by the A/E, the Agency shall make progress payment on account of the Contract Sum to the Contractor as provided below and elsewhere in the Contract Documents.

3.7 *Delete Subparagraph 5.1.3 and insert the following:*

5.1.3 An Application for Payment, including all supporting documentation, for the period of time established in Subparagraph 5.1.2 shall be received by the A/E and the Agency not later than (____) days after the end of the period for which the Contractor is making application for payment. Payment on approved amounts shall be made by the Agency not later than twenty-one (21) days after the A/E and the Agency receive the Application for Payment. *(Insert the expected number of days required by the Contractor to prepare its Applications for Payment.)*

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3.8 *Add the following sentence to Subparagraph 5.1.5:*

Each Application for Payment shall include such other information, documentation, and materials as the Agency or the A/E may require to substantiate the Contractor's entitlement to payment.

3.9 *Delete Clause 5.1.7.1 and substitute the following:*

Add, upon Substantial Completion of the Work, a sum sufficient to increase the total payments to ninety-six and one half percent (96.5%) of the Contract Sum, less any amounts the A/E shall determine for incomplete and unacceptable Work, retainage applicable to such work, unsettled claims, Step One liquidated damages then due, and anticipated Step Two liquidated damages, if any.

3.10 *Add the following Clause to Subparagraph 5.1.8:*

5.1.8.1 Refer to Subparagraphs 9.6.2 and 9.8.5 of the General Conditions. Any reduction or release of retainage, or portion thereof, however, shall not be a waiver of: (1) any of the Agency's rights to retainage in connection with other payments to the Contractor; or, (2) any other right or remedy that the Agency has under the Contract Documents, at law or in equity.

3.11 *Delete Subparagraph 5.2.2 and insert the following:*

5.2.2 Final payment shall be made within twenty-one (21) days from the date the Agency (or A/E) receives the final undisputed Application for Payment, including all supporting documentation, from the Contractor. All conditions stipulated in the General Conditions shall have been met before final payment is made.

3.12 *Insert the words "... as amended." after "... 1997" in paragraph 6.1.***3.13** *Insert the words "... as amended." after "... 1997" in paragraph 6.2.***3.14** *Add the following to Paragraph 7.2:*

Refer to Subparagraph 9.6.2 of the General Conditions.

3.15 *Add the following Subparagraphs:*

7.6.1 Contractor shall not incur any expense chargeable to the Agency on or about the Work of this Agreement until the Notice to Proceed is issued.

7.6.2 The Contractor represents and warrants the following to the Agency (in addition to any other representations and warranties contained in the Contract Documents), as an inducement to the Agency to execute this Agreement, which representations and warranties shall survive the execution and delivery of this Agreement, any termination of this Agreement, and the final completion of the Work:

7.6.2.1 that it and its Subcontractors are financially solvent, able to pay all debts as they mature, and possessed of sufficient working capital to complete the Work and perform all obligations hereunder;

7.6.2.2 that it is able to furnish the plant, tools, materials, supplies, equipment, and labor required to complete the Work and perform its obligations hereunder;

7.6.2.3 that it is authorized to do business in the State of South Carolina and properly licensed by all necessary governmental and public and quasi-public authorities having jurisdiction over it and over the Work and the Project;

7.6.2.4 that its execution of this Agreement and its performance thereof is within its duly authorized powers;

7.6.2.5 that its duly authorized representative has visited the site of the Project, familiarized himself with the local and special conditions under which the Work is to be performed, and correlated his observations with the requirements of the Contract Documents; and

7.6.2.6 that it possesses a high level of experience and expertise in the business administration, construction, construction management, and superintendence of projects of the size, complexity, and nature of this particular Project; and it will perform the Work with the care, skill, and diligence of such a contractor. The foregoing warranties are in addition to, and not in lieu of, any and all other liability imposed upon the Contractor by law with respect to the Contractor's duties, obligations, and performance hereunder. The Contractor acknowledges that the Agency is relying upon the Contractor's skill and experience in connection with the Work called for hereunder.

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7.6.3 The Agency reserves the right, pursuant to Article 7 of the General Conditions to modify the Work of the Contractor. The Agency has been certified to approve Change Orders to the Contract, where the value of each procurement is _____ or less.

(Insert the amount of Agency's Construction Change Order Certification)

3.16 *Insert the words "... as amended by 00501-OSE and as otherwise stated herein." after "... 1997" in Subparagraph 8.1.1.*

3.17 *Insert the words "... as amended." after "... 1997" in Subparagraph 8.1.2.*

3.18 *In Subparagraph 8.1.3 insert the Project Manual issue date and list the following:* **Pages**

00811-OSE	Standard Supplemental Conditions	20
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3.19 *List the following in Subparagraph 8.1.4:*

00201-OSE	Standard Supplemental Instructions to Bidders	9
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3.20 *List the following in Subparagraph 8.1.7:*

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Invitation for Construction Bids (SE-310)

Instructions to Bidders (AIA Document A701-1997 Edition)

Contractor's Bid (Completed SE-330)

END OF DOCUMENT